

No monopoly on antitrust

It would be premature for the WTO to seek to enforce global competition rules

& A recent editorial in the *Financial Times* noted that "Washington has so far resisted moves to extend the World Trade Organisation's jurisdiction to cover competition policy". It urged us to rethink our position. That is almost always good advice, and I have taken it. So I would like to explain why, on reflection, I continue to believe strongly that WTO negotiations on competition rules would be premature and could even be counterproductive.

There seems to be general agreement that a competitive environment, safeguarded by sound competition law enforcement, is crucial to the health of national economies. Similarly, we can all agree that the process of economic globalisation has had a big impact on international competition issues, particularly in three areas.

First, international cartels, where competitors in various countries agree privately to fix prices or allocate territories, have become a threat to consumers and businesses worldwide. Last year, US courts alone imposed a record total of nearly \$200m in fines in criminal antitrust cases involving international cartels. We are pursuing some 30 criminal investigations into cartels involving companies in more than 20 countries. Second, the tremendous growth in transnational mergers has led to antitrust reviews of the same transaction by competition authorities in several different countries.

And finally, there is concern that the very success of the trade liberalisation agreements of recent years has encouraged private companies to engage in anti-competitive activity that inhibits foreign competitors from achieving access to domestic markets.

All these matters deserve serious study. The WTO's trade and competition policy working group, whose inves-

tigation will be completed later this year, will look into them. Similarly, Janet Reno, the attorney-general, recently formed an advisory committee of US business, labour, academic and legal experts to help tackle these problems.

The US experience has shown that a crucial component of international competition policy is co-operation in the enforcement of national or regional competition laws. This is as true with antitrust as it is in combating the drug trade, as well as tax and securities fraud – areas in which international co-operation is taken for granted.

We and other antitrust agencies are seeking to create a network of mutual assistance agreements to obtain and share evidence. We are also pursuing other agreements to give us the tools to deal with each of the international antitrust issues identified above. But none of these is likely to be resolved by negotiating WTO competition rules. A multilateral antitrust code would be a bad idea for the following reasons:

- It would be very hard to reach agreement within the framework of the WTO on sound antitrust rules, which depend so much on the strict application of neutral legal and economic principles. Today, there is no worldwide agreement on, or commit-

ment to, such principles. On the contrary, as last summer's Boeing merger graphically demonstrated, even the US and the EU, which agree entirely on the importance of sound antitrust enforcement, diverge significantly in our application of merger enforcement and related monopoly rules.

Nor are these differences mere quibbles. In some cases, they reflect differing judgments about what goals competition law should serve. In that context, imagine how difficult it would be for the 130-odd members of the WTO, roughly half of which do not have competition laws of their own, to reach a common agreement.

- Because it would be so hard to achieve meaningful consensus, the lowest common denominator would prevail. Any WTO standards would probably end up legitimising weak and ineffective national competition laws. This would serve neither the goal of trade liberalisation nor that of antitrust enforcement.

- How would the WTO identify, much less remedy, violations of such rules? Since nearly all important trading states already have competition laws, and since these would invariably satisfy lowest-common-denominator rules, a WTO standard would serve little purpose. On the other hand, extending WTO dispute-

settlement to individual decisions taken by competition authorities would plainly stray on to delicate territory, such as second-guessing the exercise of prosecutorial discretion and judicial decision-making. It would also involve WTO panels in reviewing witness credibility and in highly confidential business information, areas in which the WTO has no experience.

More broadly, it is simply too early in the international experience of antitrust enforcement for an effective multilateral system of dispute resolution to take hold. Most WTO members have only a few years' experience (or none at all) with antitrust law or antitrust enforcement, however well-versed they may be on trade policy matters.

What is needed is to develop an international culture of sound antitrust enforcement, built on the basis of shared experience, bilateral co-operation and technical assistance to countries just starting down this road. That is not to say that multilateral organisations do not have an important role to play. The Organisation for Economic Co-operation and Development, for example, has brought before its members the "best practice" experience of member countries. This sort of interchange is increasing in other international forums, including the WTO. We support it strongly.

Indeed, the reason we backed the EU's proposal to establish a WTO working group on competition policy was precisely so that a culture of competition could take root. Trade policy uninformed by competition policy and antitrust enforcement would not be adequate to meet the challenges awaiting the WTO. But developing such a culture takes time.

Our experience at the OECD persuades us that this is time well spent. We certainly hope the WTO will continue to deepen its expertise in this important area. But premature efforts to adopt WTO competition rules or procedures will do more harm than good.

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Joel Klein: wants network of mutual assistance agreements